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# CLAY COUNTY, MINNESOTA

ORDINANCE NO. 2012-4

**AN ORDINANCE OF THE COUNTY OF CLAY, MINNESOTA REPEALING  
AND READOPTING CERTAIN SECTIONS WITHIN TITLE 8 PERTAINING TO  
DEVELOPMENT CODE CHAPTERS 1, 3, 5, 7 AND 8; AND FURTHER  
ESTABLISHING ACCESS CONTROL/MANAGEMENT PROVISIONS WITHIN  
CHAPTER 3, SECTION 8.3.6.**

**WHEREAS**, the County of Clay, Minnesota ("County") is a statutory County duly organized and existing under Article XII of the Minnesota Constitution; and

**WHEREAS**, pursuant to Minnesota Statute Chapter 394 and specifically §394.21, the County has the power and authority to conduct and implement planning activities;

**WHEREAS**, the County has, by ordinance, and pursuant to Minnesota Statute Chapter 394, adopted Title 8 of the Clay County Code regarding land use, zoning and development ("Development Code");

**WHEREAS**, the County has undertaken a process to establish and draft Development Code provisions related to access control and access management, consistent with authority granted under Minnesota Statutes §160.08; and to further amend and repeal certain sections of the Development Code to ensure continuity and consistency with aforementioned access control/management provisions; and

**WHEREAS**, the County, in cooperation with the Fargo-Moorhead Metropolitan Council of Governments ("Metro COG"), has conducted a public hearing per Minnesota Statute §375.51 on the proposed Development Code amendments on December 27<sup>th</sup>, 2012, thereby allowing all interested parties an opportunity to review, comment and provide feedback regarding the proposed amendments; and

**WHEREAS**, the County hereby finds and determines that the proposed Development Code amendments are appropriate and necessary to the function and efficient operation of the County and to ensure the health, safety, morals, and general welfare of the County.

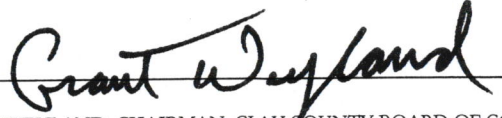
NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE COUNTY OF CLAY,  
MINNESOTA HEREBY ORDAINS AS FOLLOWS:

**Section 1.** Adopt Development Code Amendments set forth within Exhibit A to Title 8 of the Clay County Code. The County hereby adopts the proposed amendments, attached hereto and incorporated herein as Exhibit A.

**Section 2.** Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

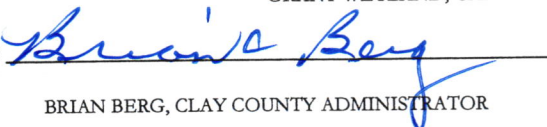
**Section 3.** Effective Date. This ordinance shall become effective and be in force immediately upon final passage, consistent with Minnesota Statute §375.51.

ADOPTED BY THE CLAY COUNTY BOARD OF COMMISSIONERS ON 12-27 2012.



GRANT WEYLAND, CHAIRMAN, CLAY COUNTY BOARD OF COMMISSIONERS

ATTEST:



BRIAN BERG, CLAY COUNTY ADMINISTRATOR

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**Title 8, Chapter 1, Section 8.1.6 (A)**

Repeal and Re-Adopt Section 8.1.6(A) as follows:

- A. Definition. Development Defined.** Except as otherwise provided, “development” means the commencement of any building or mining operation, the making of a change in the use or appearance of any structure or land, the parceling of land into one or more lots, the creation or termination of rights or access in any form and under all conditions and the creation or termination of riparian rights. Development includes all other activities customarily associated with it unless otherwise specified. Reference to any specific operation as not involving development is not intended to mean that the operation or activity when part of other operations or activities is not development. Reference to particular operations is not intended to limit the generality of subsection 1, below.

- 1. Activities or Uses Considered Development:** The following activities or uses shall be considered “development” as defined in this Section:

- a. Change in Use:** A change in the use of a structure or land;
- b. Reconstruction or Alteration of a Structure:** Reconstruction or alteration of a structure, including, but not limited to alteration of the size of the structure;
- c. Increase in Intensity of Use:** An increase in the intensity of use of land such as an increase in the number of businesses, manufacturing establishments, office or dwelling units in a structure or on a parcel of land, or expansion of the area of a structure or a parcel of land that is dedicated to a land use;
- d. Mining or Excavation:** Commencement or expansion of mining or excavation on a parcel of land;
- e. Fill:** Deposit of refuse, soils or other materials to fill a parcel of land;
- f. Alteration of Shore, Bank or Flood Plain:** Alteration of a shore, bank or flood plain of a river, stream, lake, pond or artificial bodies of water;
- g. Reestablishment of Use:** Reestablishment of a use which has been abandoned for one year;
- h. Subdivision:** Residential, commercial or industrial subdivisions;
- i. Departure From Normal Use:** Departure from the normal use for which development permission has been granted or failure to comply with the conditions of this Ordinance or order granting the development permission under which the development was commenced or is continued;
- j. Access:** Any request for an Access Connection (new, changed, modified, altered, re-constructed, etc.) onto a County highway or public right-of-way which includes any field entrance, driveway or public/private roadway (see Section 8.3.6 for further details). This includes any type of access such as permanent, temporary or field access/opening.

**Title 8, Chapter 3, Section 8.3.6**

Repeal and Re-Adopt Section 8.3.6 as follows:

**8.3.6: Traffic Control and Access Management.**

- A. Intent and Purpose.** The County recognizes the primary function of a highway is to accommodate traffic mobility with a secondary and subservient function to provide access to abutting property. The County, through its police powers as established under Minnesota law, can utilize access control/management techniques to promote public safety while preserving the functional integrity of highways. The intent of this section is to permit reasonable, convenient and suitable access to property(ies) as contemplated within state statutes and applicable case law; under the context of access control standards and access management policies established to: (a) preserve highway capacity, (b) minimize the frequency and severity of vehicular conflicts, (c) maintain effective and reliable mobility of the traveling public, (d) reduce or eliminate opportunities for traffic delays and congestion, and (e) protect the substantial public investment in the existing transportation system and reduce the need for expensive remedial measures.
- B. Statutory Authorization.** Pursuant to Minnesota State Statute §160.02, §160.08 and §160.18 the County Board under the auspices of the statutorily defined road authority has the ability to designate, locate, improve and maintain controlled-access highways for public use as deemed appropriate. Further, the road authority has the ability to design, regulate, restrict or prohibit access pursuant to terms and conditions as specified by the

County. As noted in §160.02, this authorization applies to all highways under the County's purview; inclusive of County Highways, County state-aid highways and township roads (as applicable).

**C. Scope, Interpretation and Applicability.** The provisions of this section shall apply to any development activity per this Code, which shall include the location and design of public or private roadways and access, in any form (ie. new, changed, modified, altered, re-constructed, etc.), to the county road system. Access legally established as of the effective date of the implementing ordinance may remain until an activity is contemplated as set forth in this sub-section. In addition, access legally established as of the effective date of the implementing ordinance but not in conformance with standards in this ordinance are considered non-conforming and may continue in existence subject to the regulations as set forth in sub-section (G)(10) of this Section.

1. As set forth in 8.5F.3, any plat or Access Permit request filed within the Urban Expansion District (UED) which lies within any city's adopted growth area plan shall conform to the growth area plan and all applicable policies and ordinances of the city; unless the County ordinance is determined (by the County) to be more restrictive. In addition, any other development activity within the UED shall comply with the provisions as established in this Section.
2. For municipalities and/or townships with adopted land development codes, zoning ordinances or access management policies; this section of the County Development Code shall supersede and apply to any development activity contemplated per this Code which requires an Access Permit or Access Plan relative to the County road system; unless the municipality or township standard or regulation is more restrictive as interpreted by the County, or as otherwise specified in this Code. If the municipality or township standard is applied an Access Permit is still required under the provisions of this Code, with issuance prior and/or concurrent with any city/township development application.

a. Pursuant to Ordinance No. 2000-3 any development activity contemplated under the Barnesville Area Joint Powers Agreement and Zoning Ordinance is not subject to the provisions of this section. However, similar to 8.3.6(C)(2) an Access Permit is still required for any Access Connection onto the County road system to ensure coordination and communication with the County Highway Department. The Access Permit shall be issued prior and/or concurrent with the joint powers development application process.

**D. Violations.** Any Access Connection to a county roadway or highway constructed or established after the effective date of the implementing ordinance (December 27<sup>th</sup>, 2012) without an approved Access Permit or in violation of an approved access permit shall be considered illegal. The county highway engineer may order discontinuance of its use and may order its removal. The property owner responsible for installing an illegal access shall be responsible for all costs, including any borne by Clay County, associated with: (a) closure of the access; (b) removal of the access; and/or (c) restoration of the ditch or boulevard area to its previous condition.

1. Any person who fails to comply with an order to close and/or remove an illegal Access Connection shall be guilty of a misdemeanor and, upon conviction thereof, may be punished to the maximum extent allowed by law. For each day the violation continues, a separate offense shall be declared. See County Code §1.4.2 for additional information on violations and general penalties.

**E. Access Permit Required.** A permit issued by the County Highway Department is required for any Access Connection within a county right-of-way, as further defined in 8.3.6(C), above.

1. **Reconstruction.** Reconstruction of an existing conforming access shall not require payment of any permit fee; however, an updated permit shall be issued.
2. **Application for an Access Permit.** Applications for an Access Permit must be made in writing on a form provided by the Clay County Highway Department. A fee, as established by the Clay County Board of Commissioners, shall accompany the Access Permit application. Where a proposed Access Connection has been approved as part of an Access Plan, no permit fee shall apply.

3. **Review of Access Permits.** An initial determination shall be made on whether the application is complete within three (3) working days of receipt of the completed application form. A final decision on the Access Permit shall be rendered within thirty (30) calendar days following acceptance of a complete application; and upon determination of consistency with provisions set forth in this Code. At the discretion of the county highway engineer, conditions of approval may be attached to the Access Permit. Receipt of an Access Permit from the Clay County Highway Department under this ordinance does not preclude any other permits that may be necessary (ie. watershed district, township, municipality, etc.) prior to access construction or implementation.
4. **Access Plan.** Submittal of an Access Plan is required with any application for a subdivision (§8.7), conditional use permit (§8.4.7) or development permit (§8.4.8) as follows: (a) with frontage on a county road; (b) any request for an Access Connection onto a County highway or public right-of-way; or (c) any request for access to a roadway under the jurisdiction of another governmental unit within one-eighth (1/8) mile of an intersection with a county roadway. The Access Plan shall be processed concurrently with the application with a final recommendation submitted by the county highway engineer at the appropriate time for consideration by the governing Board(s) during the review process. The recommendation shall indicate whether the Access Plan is consistent with all provisions and criteria of the County Code or whether modifications or conditions are necessary to establish compliance.
5. **Access Permit and Access Plan Submittal Requirements.** An application for an Access Permit or submittal of an Access Plan shall include the following, at minimum:
  - a. General site plan showing the surrounding area, inclusive of the following:
    - i. Dimensions of the property (and abutting properties if applicable) and the location of public rights-of-way. At the county highway engineer's discretion, this may require detailed survey accurate data or other title/property research that shall be the applicant's responsibility;
    - ii. The type and intensity of existing and/or any proposed land uses; and proposed lot boundaries for any subdivision of property;
    - iii. The location of existing and/or proposed streets, driveways, parking areas, field access points, etc.;
    - iv. The location of, and distance to, public or private access serving adjacent parcels;
    - v. A phasing plan if the property is planned to be developed in phases;
    - vi. A traffic impact study, if requested and determined necessary by the county highway engineer; and
    - vii. A signal justification report or warrant analysis, if a traffic signal is proposed or anticipated as a need as part of any application.
  - b. Proof of the appropriate watershed permit for culvert sizing.
6. **Approval Guidelines and Criteria.** In reviewing an Access Permit request and/or an Access Plan the county highway engineer shall consider the following to determine whether the permit shall be approved:
  - a. Consistency with provisions and guidelines pursuant to Section 8.3.6 of this Code and any other applicable requirements as set forth within the County Code;
  - b. Provides adequate capacity to accommodate the conveyance of drainage within the public right-of-way;
  - c. Adequate intersection sight distance is provided;

- d. Adequate space is provided between access points to accommodate turn lanes under present or future conditions;
- e. Design details such as turning radii, driveway slope, angle of entry, width and other specifics are consistent with good engineering design practice.

**F. Construction.** All work completed on an Access Connection shall be consistent with the approved Access Permit and/or Access Plan. Completed work shall be inspected and approved by the county highway engineer, or a designated representative, in order to finalize the Access Connection and permit. Requests for final inspections shall be submitted to the County Highway department in writing.

1. **Construction Responsibilities.** The applicant shall be responsible for all costs associated with the construction of an Access Connection, including any improvements required to meet any conditions of approval. Improvements may include, but not limited to, the construction of the driveway or intersection, turn lanes, raised medians, traffic control devices (ie. signs, pavement markings, signals, etc.) or other access control measures, connections to other roadways, drainage structures, grading/site restoration and the acquisition or dedication of necessary right-of-way (as identified and determined by the County).
2. **Duration of Permit.** If the Access Connection has not been constructed within two (2) years after approval of the Access Permit or Access Plan, the permit shall become null and void unless a request for a time extension to complete the Access Connection has been granted by the County.
3. **Performance Guarantee.** An (irrevocable) letter of credit, certified check or bond may be required in an amount to be determined by the county highway engineer to insure compliance with the requirements and conditions of an Access Permit and/or Access Plan.

**G. Standards for Access Connections.** The following sub-section defines the key principles and provisions that shall be used to guide decisions relative to Access Connection permitting.

1. **Access.** As contemplated in MN Statute §160.08 and established under Minnesota case law, [*Hendrickson v. State*, 267 Minn. 436, 446, 127 N.W.2d 165, 173 (1964)] property owners have a right of “reasonably convenient and suitable access” to a public street or highway that abuts their property. Property(ies) are not entitled by right to approval of an Access Connection onto a County roadway or highway as consideration shall be given to access via connections to local streets or via joint or shared access with a parcel that has conforming access.
2. **Minimum Spacing (Roadways, Driveways and Intersections) and Access Connection Requirements.** The following table defines minimum spacing requirements for *full* and *limited* Access Connections. A *full* Access Connection is considered as an access that allows all through and turning movements whereas a *limited* Access Connection does not allow all movements. Generally, although not all inclusive, *limited* access will include right-in/right-out configurations and/or the elimination of some or all left turn movements.

In addition, the table outlines minimum spacing requirements for driveways (see Driveway definition per §8.8.2). Minimum spacing between an intersection and any Access Connection shall be 500 feet; however, the county engineer may issue a permit, at his/her discretion, which allows spacing less than the 500 feet if requested and supported by the city and deemed appropriate based on existing and anticipated future conditions.

Road Classification	Spacing Between Roadways		Spacing Between Driveways		
	Full Access	Limited Access	Posted Speed Limit		
			< 35 MPH	35 – 45 MPH	> 45 MPH
Major Arterial *	n/a	n/a	Not Permitted*	Not Permitted*	Not Permitted*
Minor Arterial *	1320	660	330	660	660
Collector	660	330	160	330	330
Local Road	330	120	50	160	160



\* To note, pursuant to Figure 2-18 (County Comprehensive Plan – Clay County Existing Functional Classification) all *Major Arterials* and a majority of the *Minor Arterials* are state facilities and are thereby subject to regulations and guidelines as set forth and administered by the Minnesota Department of Transportation.

- a. For sites or property(ies) with inadequate roadway or ROW frontage to meet the minimum spacing requirements the county highway engineer shall work with the applicant to determine the most appropriate access point; which may require, consistent with §8.3.6(G)(1), access via connections to local streets or developed service roads or via joint/shared access with a parcel that has conforming access.
  - b. The county highway engineer may grant access approval for a permanent use not meeting the spacing requirements, on an interim basis, if an Access Plan demonstrating how spacing requirements will ultimately be met and appropriate assurances in the form of a recordable and enforceable easement or access agreement insuring future provision of a conforming access are submitted.
3. **Alignment with Existing Access.** On undivided highways, Access Connections on opposing sides of the roadway should be aligned with one another or offset an adequate distance to minimize or eliminate overlapping left turns and other issues that may result in roadway operational problems.
4. **Auxiliary Lanes.** The county highway engineer may require auxiliary lanes (ie. left or right turn bays, bypass lane, acceleration/deceleration lanes, etc.) where deemed necessary due to traffic volumes or other operational issues.
5. **Access adjacent to Turn Lanes or Bypass Lanes.** Access Connections shall not be approved within any auxiliary lane; inclusive of turn lanes, acceleration lanes, deceleration lanes or taper sections. The county highway engineer shall have the authority to waive this requirement if no other reasonable or suitable access is available.
6. **Restricted Turn Movements and Limited Access.** In certain circumstances, turning or through movements may be restricted in which only *limited* access is permitted. Outlined below are scenarios which typically warrant consideration to *limited* access:
  - a. Where numerous low volume access points exist and the spacing between them does not permit adequate left turn tapers and storage bays for inbound vehicles without blocking adjacent access points;
  - b. At access points close to an intersection where left turn bays would conflict with inbound or outbound left turn movements for an existing or proposed access;
  - c. Where other conditions, such as sight distance, prevent left turn movements from being made safely;
  - d. Where a particular parcel is provided with more than one (1) access point and volumes do not justify left turn access into and/or from both access points;
  - e. When a parcel has access provided by both a signalized access point and an un-signalized access point, left turns may be prohibited at the un-signalized intersection;
  - f. When the median opening for left turn movements would be too close to another median opening;
  - g. When other capacity, delay, operational or safety conditions make specific left turns detrimental to the health, safety and welfare of the public.

Turning movement restrictions shall be enforced with barrier median channelization or driveway channelization, as determined appropriate by the county highway engineer.

7. **Indirect Access.** Access to a County roadway may be prohibited when a property abutting a County roadway has frontage on one or more streets and reasonable access can be accommodated on these

facilities. The County Engineer shall determine, on a site-specific basis, whether access will be permitted to the County roadway.

When property abutting a County roadway is to be subdivided or developed, direct access to a County roadway shall not be used in lieu of an adequate internal traffic circulation system. Indirect access to individual lots shall be required from an internal traffic circulation system which itself provides access to the County roadway or another facility. The County Engineer shall determine, on a site-specific basis, which lots abutting the County roadway may have direct access (if any) and which lots shall have indirect access.

8. **Field Access.** Field access or openings that are inconsistent with spacing standards may be permitted by the county highway engineer if the field has no other reasonable access. Typically, one (1) field opening to a property under the same ownership or controlling interest may be granted and additional openings shall only be granted if topographical or agricultural activities necessitate. An Access Permit issued for a field opening shall specifically cite any conditions attached to the permit; inclusive of the condition that the opening shall only be granted and valid for specific use, intensity and access purposes. See Field Access/Opening definition within §8.8.2 for additional information.
  9. **Discontinuance of Existing Access Connections.** When a Development activity is pursued which requires an Access Permit and results in the relocation of an existing Access Connection; any existing Access Connection(s) not approved for continuance shall be removed and the land graded and landscaped to conform with adjacent land. In addition, if curb/gutter is present, these improvements shall be installed by the applicant per the standards of the county highway engineer.
  10. **Culverts.** Pursuant to MN Statute §160.18, and as acknowledged by Clay County Policy Statement adopted by the County Board on November 20<sup>th</sup>, 2012 (as may be amended from time to time) the County may provide the necessary culvert(s) for access onto a highway for an abutting landowner, upon issuance of an Access Permit consistent with the provisions of this ordinance.
  11. **Dedications and Plats.** Any subdivision plat approved and filed after the effective date of this implementing ordinance shall include dedication language granting access control rights and rights to any access opening(s) to Clay County; as determined appropriate and applicable by the county highway engineer.
  12. **Nonconforming Access.** The purpose of this section is to recognize the existence of Access Connections which were lawfully established but do not meet the requirements of this ordinance and to discourage the expansion and/or intensification of such access; and to encourage the elimination of non-conforming accesses or reduce their negative impact on the County roadway system as opportunities arise.
    - a. **Continuation:** Access Connections in place as of the effective date of this ordinance that do not conform with the standards shall be allowed to continue as long as there is no physical change in the access, change in the land use served by the access, intensification of the land use served by the access or any activity contemplated as *development* under this code as set forth in §8.1.6(A)(j). Normal maintenance and repair of the access shall not be considered to be a physical change in the access.
    - b. **Discontinuation.** If the use of a nonconforming access is discontinued for more than one (1) year the access shall not be re-established unless approval of an Access Permit is issued pursuant to this code. If a non-conforming access serves a non-conforming use or structure, the use of which has been discontinued for more than one (1) year, or if a non-conforming use is damaged to an extent exceeding fifty (50) percent of its market value or replacement cost, whichever is less, any subsequent access serving the property shall conform to the provisions of this ordinance. For additional information on non-conforming uses and structures, see §8.2.2 of the County *Development Code*.
- H. **Modifications and Deviations from Access Standards.** Deviations up to fifteen (15) percent of the minimum spacing standard or 200 feet, whichever is less, may be authorized by the county highway engineer

where a property is unable to meet the minimum Access Connection standards and where the deviation will not create any safety concerns. The county highway engineer shall have the authority to require the applicant to complete a traffic impact study or similar document (as appropriate) to analyze whether the deviation would negatively impact the roadway under existing or future conditions.

- I. Appeal Procedures.** An applicant whose Access Permit, Access Plan or proposed Access Connection is not approved, or is approved with conditions which are not agreeable to the applicant, shall have ten (10) days to appeal the decision in writing, specifically citing the reasons for which an appeal should be approved.

1. **Process.** Appeals on decisions regarding an Access Permit, Access Plan or proposed Access Connection shall be handled by the Board of Adjustment pursuant to §8.4.4 of this Code and MN Statute §394.27. Any appeal shall be filed by the applicant within ten (10) days of the date of any denial.

2. **Criteria for Appeal Approval.** Appeals shall be considered under the criteria set forth within §8.4.4 of this Code and MN Statute §394.27.

- J. County Highway Engineer and Use of the Highway Tracking Committee.** The county highway engineer reserves the right to forward any Access Permit or Access Plan to the Highway Tracking Committee for discussion, direction or interpretations relative to this ordinance; although the county highway engineer shall still retain final decision making authority. If a permit is forwarded to the Highway Tracking Committee a 'final decision' on the permit as contemplated in §8.3.6(E)(3) shall be extended by thirty (30) calendar days.

#### **Title 8, Chapter 4**

Repeal and Re-Adopt Section 8.4.4(5) as follows:

5. **Appeals of Administrative Decisions.** The Board of Adjustment shall have the authority to hear and decide on appeals of final administrative decisions of the Planning Director/Zoning Administrator or the County Highway Engineer that are not reviewed by the Planning Commission, County Board or Board of Adjustment. Such final administrative decisions may be appealed to the Board of Adjustment by the applicant within ten (10) days of the date of any denial by filing with the Board of Adjustment a notice of appeal specifying the grounds of the appeal.

#### **Title 8, Chapter 5**

Repeal as follows:

8.5C.6(B)4

8.5D.4(A)4 & 8.5D.4(B)4

8.5G.3(E)

8.5H.3(E)

#### **Title 8, Chapter 6, Section 8.6.10**

Repeal and Re-Adopt Section 8.6.10 as follows:

##### **8.6.10: Standards for All Commercial and Industrial Uses.**

- A. Access Management / Access Plan:** Proposed commercial and industrial uses where any portion of the boundary of the proposed parcel is adjacent to Highways 10, 336, 9, 32, 34 or Interstate 94 shall submit an access management plan with any conditional use, rezoning, platting or subdivision request. The access management plan shall conform to the access management submittal requirements, provisions and criteria as set forth in §8.3.6 of the County Development Code.

#### **Title 8, Chapter 7, Section 8.7.14(E)(2)(b)**

Repeal and Re-Adopt Section 8.6.10 as follows:

**Access Standards.** Access design and permitting shall comply with sub-section 8.3.6 of this Code and as applicable, any requirements or guidelines as set forth by the Minnesota Department of Transportation.



**Title 8, Chapter 8, Section 8.8.2**

Repeal and Re-Adopt Section 8.8.2 to include the following definitions:

**ACCESS:** A means of providing vehicular entrance or exit to a property or parcel from an abutting property, public road or right-of-way. Access types include permanent, temporary or field openings.

**ACCESS CONNECTION:** Any field opening, Driveway, public or private street/roadway that provides reasonable access for the movement of vehicles between the county road system and an abutting property.

**ACCESS PERMIT:** A permit issued by the county highway engineer or his/her designee(s) authorizing an Access Connection within a county right-of-way or onto the county roadway system; in accordance with provisions set forth within the County Code.

**ACCESS, PRIVATE:** An Access Connection that is privately owned and maintained and which provides the principal means of access to an abutting property.

**ACCESS, PUBLIC:** An Access Connection under the jurisdiction of a public authority that provides the principal means of access to an abutting property.

**ACCESS PLAN:** A plan reviewed by the County Planning Commission and approved by the Board of Commissioners upon recommendation of the county highway engineer establishing a coordinated plan for Access Connections to the county roadway system as part of an application for subdivision, conditional use permit or a development permit.

**DRIVEWAY:** A roadway or opening constructed for vehicular travel and which is privately owned and maintained; and provides the principal means of access to three (3) or fewer abutting parcels or residences.

**FIELD ACCESS/OPENING:** An Access Connection to an agricultural field used for the movement of farm vehicles and equipment. Access to a farmstead, feedlot, farm-related structures or uses contemplated under the AGRICULTURAL USE definition, exclusive of any uses that fall within this definition, are not considered a field access or opening.

**NON-CONFORMITY:** Any legal use, structure, access or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

**NON-CONFORMING ACCESS:** An Access Connection to a property or parcel that existed prior to the effective date of this ordinance that does not conform with the requirements of this ordinance.

**RIGHT-OF-WAY:** Land in which the county has an interest, [including, but not limited to, by fee title, easement or plat dedication], which is primarily intended, directly or indirectly, to be used for a highway, street, road, alley or drainage facility.

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